

Letter of Findings Number: 04-20140618
Enhanced Prepaid Wireless Telecommunications Service Charge
For Tax Years 2011-2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Retail business that failed to develop its argument and did not meet its burden of proof regarding its protest.

ISSUE

I. Prepaid Wireless—Burden of Proof.

Authority: IC § 6-8.1-5-1; IC § 36-8-16.6-13; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the proposed assessment of enhanced prepaid wireless telecommunications service charge.

STATEMENT OF FACTS

Taxpayer is a retailer operating a convenience store that sells gasoline. Taxpayer is incorporated and elected to file as an S-corporation. The Indiana Department of Revenue ("Department") conducted an audit for enhanced prepaid wireless communications service charge, among other taxes that were audited, which resulted in proposed assessment of tax. Taxpayer protested and an administrative hearing was held; this Letter of Findings results. More facts will be provided as needed below.

I. Prepaid Wireless—Burden of Proof.

DISCUSSION

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

IC § 36-8-16.6-13 provides that:

The enhanced prepaid wireless charge is the liability of the consumer and not of the seller or a provider. However, a seller is liable to remit to the department all enhanced prepaid wireless charges that the seller collects from consumers under section 12 of this chapter, including all charges that the seller is considered to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

The audit report states: "As of 07/01/10 . . . the seller of prepaid wireless cards and cellular minutes is responsible

to remit the fee of \$0.25 per transaction. Beginning 07/01/12, that fee has increased to \$0.50 per transaction." And further, "As October through December 2013 are abnormally low and exactly the same, the monthly average transactions for January 2011 through September 2013 was determined."

Taxpayer's protest does not cite to any statutes, regulations, or cases, nor does Taxpayer's protest specifically address the "Enhanced Prepaid Wireless Telecommunications Service Charge" issue. The Department finds that Taxpayer has not presented a sufficiently developed argument for the Department to address. See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (quoting *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)).

FINDING

Taxpayer's protest is denied.

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